IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&
THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT APPEAL NO :769 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 28/02/2005 in WP NO :20032 OF 2004 on the file of the High Court.)

Between:

M. Murali Krishna, S/o. Late Jayaram,
E.No. 40270, R/o. 1-8-375, Chikkadpally, Hyderabad.

..... APPELLANT

AND

1 APSRTC, Musheerabad, Hyderabad, Rep. by its Managing Director.
2 APSRTC, Bus Depot, Bodhan, Nizamabad District, Rep. by its Depot Manager.

.....RESPONDENTS

Counsel for the Appellant: MR.V.NARASIMHA GOUD

Counsel for the Respondents: MR.V.T.M.PRASAD (S.C.FOR APSRTC)

The Court made the following :

JUDGMENT: (per Honourable Smt. Justice T. Meena Kumari)

This writ appeal is filed by the appellant aggrieved by the order in W.P.No.20032 of

2004, dated 28th February, 2005, under which the learned Single Judge dismissed the said writ petition.

The appellant herein is the writ petitioner. Originally, the writ petition was filed by him seeking to quash the proceedings No.E1/(5)/04-BDN, dated 19.10.2004 passed by the 2nd respondent.

The learned Single Judge of this Court having observed that the enquiry report was for the absence of the petitioner from 6.8.2004 to 10.8.2004 and dismissal was also for the same period and incidentally, it might have been mentioned in the proceedings impugned that the petitioner was absent from 16.10.2004 to 19.10.2004, but it does not amount to violation of any principles of natural justice and apart from that, an alternative remedy by way of an appeal is always available to him before the Depot Manager, disposed of the writ petition. Aggrieved by the same, the petitioner preferred this appeal.

Heard the learned Counsel on either side.

The learned Counsel for the petitioner contended that on 18.8.2004, the charge sheet has been issued to the petitioner for his unauthorized absence from 6.8.2004 to 10.8.2004, but he was removed from service on the allegation of his absence from 06.08.2004 to 10.8.2004 and 16.10.2004 to 19.10.2004. He further contended that no charge has been framed and no enquiry has been conducted for the period of absence from 16.10.2004 to 19.10.2004 and the learned Single Judge failed to appreciate the above facts and therefore, the order impugned is liable to be set aside.

A perusal of the record goes to show that the petitioner was absent from 6.8.2004 to 10.8.2004 on the ground that he suffered from Chest pain and he also gave his explanation to the notice issued by the respondents along with the medical certificates. It is apparent from the proceedings impugned that the punishment of removal from service, is based on the unauthorized absenteeism of the petitioner for the period from 6.8.2004 to 10.8.2004 as well as 16.10.2004 to 19.10.2004 whereas the charge is confined to only the period from 6.8.2004 to 10.8.2004. In the absence of any material to show that charge sheet has been issued and enquiry was conducted for absenteeism for the period from 16.10.2004 to 19.10.2004 also, it has to be held that the proceedings passed by the 2nd respondent, are beyond the scope

of the charge sheet.

In this background of the matter, We have no hesitation to observe that in the absence of a specific charge for the alleged unauthorized absence for the period from 16.10.2004 to 19.10.2004, passing of the proceedings impugned by taking into consideration the unauthorized absence for the said period without any charge or enquiry, amounts to depriving the opportunity of the delinquent to defend his case and it also amounts to arbitrariness.

In view of the above circumstances, we do not agree with the findings of the learned Single Judge that the proceedings passed by the 2nd respondent removing the petitioner for the absenteeism for the period from 06.8.2004 to 10.08.2004 as well as 16.10.2004 to 19.10.2004 is not in violation of the principles of natural justice and that the said period of absence from 16.10.1994 to 19.10.2004 might have been mentioned incidentally, and therefore, the order impugned herein, is liable to be set aside.

Accordingly, this writ appeal is allowed and the order of the learned Single Judge is set aside and consequently, writ petition is allowed. No order as to costs.

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Justice T.Meena Kumari

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Justice L. Narasimha Reddy

Date: 5th April, 2005.

Nn.

Copy to:

1. The Managing Director, APSRTC, Musheerabad, Hyderabad.
2. The Depot Manager, APSRTC, Bus Depot, Bodhan, Nizamabad District.
3. Two C.D. copies.